

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.202(b)  
Table of Allotments,  
FM Broadcast Stations,  
(Monticello, Arkansas, and  
Bastrop, Louisiana)

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MM Docket no. 99-141  
RM-9339

RECEIVED

JUN 21 1999

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS ON NOTICE OF PROPOSED  
RULE MAKING AND ORDER TO SHOW CAUSE**

Community Radio Network, Inc. ("Community"), by its attorneys and pursuant to Section 1.415 and 1.420 of the Commission's Rules, hereby files these Comments in support of the Commission's *Notice of Proposed Rule Making*, DA 99-820, released April 30, 1999 ("NPRM") in the above-captioned docketed rule making proceeding. In support, Community shows the following:

**Background**

Community is licensee of KHBM-FM, Channel 229C3, at Monticello, Arkansas, having acquired the station June 1, 1999, from the former licensee, Midway Broadcasting Company ("Midway") through consummation of File No. BALH-990329GK. Midway initiated this rule making proceeding through the filing of a Petition for Rule Making requesting the substitution of Channel 229C2 for Channel 229C3 at Monticello, Arkansas, and the concurrent modification of the license of KHBM-FM to operate on Channel 229C2. In order to accommodate KHBM-FM on Channel 229C2, Midway requested the substitution of Channel 230A for vacant Channel

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230C3 at Bastrop, Louisiana, as well as the modification of license of Station KTRY-FM, Bastrop, currently operating on Channel 232A, to specify operation on Channel 230A at Bastrop. As an option, Midway suggested the placement of a site restriction on vacant Channel 230C3 at Bastrop would enable Midway to upgrade KHBM-FM while preserving the Channel 230C3 allotment. Midway explained that it is precluded from upgrading by filing a one-step application because of the existence of Channel 230C3 at Bastrop. As a result of Midway's petition, the Commission issued its *NPRM* proposing two options:

<b><u>Option I</u></b>		
<u>City</u>	<u>Present</u>	<u>Channel No.</u>
		<u>Proposed</u>
Monticello, Arkansas	228A*, 260C3	229C2, 260C3
Bastrop, Louisiana	230C3, 232A 247A, 261C2	230A, 247A, 261C2
<b><u>Option II</u></b>		
Monticello, Arkansas	228A*, 260C3	229C2, 260C3
Bastrop, Louisiana	230C3, 232A 247A, 261C2	230C3 <sup>1</sup> , 247A, 261C2

The Commission proposes, in any event, to remove Channel 232A from Bastrop.

### **The Commission Should Upgrade KHBM-FM as Proposed.**

On May 14, 1999, Jamie Patrick Broadcasting, Ltd. ("Patrick"), the licensee of KTRY-FM, Bastrop, filed an application (File No. BPH-990514IE) for construction permit to change frequency and class. Today, Community has filed an informal objection to the application pointing out the deficiencies therein. In summary, however, the application proposes to operate

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\*KHBM-FM is currently licensed for operation on Channel 229C3.

<sup>1</sup> This option contemplates a change in the reference coordinates only for the existing Channel 230C3 at Bastrop to NL 32° 43' 25", WL 91° 56' 56" 7.1 km south of Bastrop.

KTRY-FM with Class C3 facilities at geographical coordinates North Latitude 32° 49' 06", and West Longitude 91° 54' 29", the present site of KTRY-FM. This site shortspaces the reference coordinates for Channel 229C2 at Monticello, Arkansas, and thus is in conflict with Community's proposal. In the *NPRM*(¶5-6) the Commission noted that Station KTRY-FM previously requested and was granted a modification to Channel 230C3, and directed an *Order to Show Cause* to Patrick to "choose unequivocally no which option it will pursue in response to this Order to Show Cause. Failure to respond will result in a downgrade of the current vacant allotment of Channel 230C3 to Channel 230A at Bastrop to coincide with Station KTRY-FM's current operating facilities, and Station KTRY-FM's license will be modified accordingly."

Patrick has been ordered to show cause, not later than June 21, 1999, by filing a written statement showing with particularity why its license should not be modified to specify operation on Channel 230A at Bastrop. If Patrick fails to make the showing, its license will be so modified.

Under *Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application*, 8 FCC Rcd 4735 (July 13, 1993), Patrick's application (if acceptable) would be held in abeyance and would not be granted unless the conflict were resolved. If the conflict were not resolved by Patrick's voluntary action, it will be resolved in the context of the rule making proceeding. However, if Patrick's defective application is considered in conjunction with the *NPRM*, it must be rejected, since the allotment of Channel 229C2 to Monticello, Arkansas, represents a preferred arrangement of channels over the retention of Channel 230C3 at Bastrop, Louisiana, without a site restriction. Midway previously demonstrated that the modification of KHBM-FM to operate on Channel 229C2 would enable the station to provide 1.0 mV/m service to 71,651 persons in an area comprising 8,559.5 square

kilometers, representing an increase of 17,522 persons in 3,789.4 square kilometers over its authorized Class C3 facility. If Channel 230A is substituted for Channel 230C3 at Bastrop, it would enable KTRY-FM to provide service to 40,426 persons in 2,671.9 square kilometers. While use of Channel 230C3 at the KTRY-FM existing site would enable KTRY-FM to serve 102,259 persons within the 1 mV/m contour, the suggested restricted site 7.1 kilometers southwest of Bastrop would provide service to 180,307 persons in 4,808.6 square kilometers, an increase of 146,211 persons over KTRY-FM's current Class A authorization. Retention of Channel 230C3 at the KTRY-FM site would (a) preclude the upgrade of KHBM-FM and (b) deny approximately 80,000 persons service from KHBM-FM.

Such a determination must be made under *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982) which sets out the operative criteria:

- (1) First full-time aural service.
  - (2) Second full-time aural service.
  - (3) First local service.
  - (4) Other public interest factors.
- [Co-equal weight is given to priorities (2) and (3)]

In this case, the determination must be made under priority (4) above since neither Community nor Patrick propose first or second aural service, or a first local service.<sup>2</sup> Under priority (4), the provision of expanded service by KHBM-FM to the residents of Monticello and the provision of expanded service on Channel 230C3 from the restricted site for KTRY-FM outweigh the denial of expanded service by KHBM-FM and the denial of service to an additional 80,000 persons by KTRY-FM that would result from permitting KTRY-FM to upgrade on Channel 230C3 at its existing site.

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<sup>2</sup> Monticello is served by three commercial stations (one AM, two FM) and Bastrop is served by five stations (one commercial AM, three commercial FM and one noncommercial FM) stations.

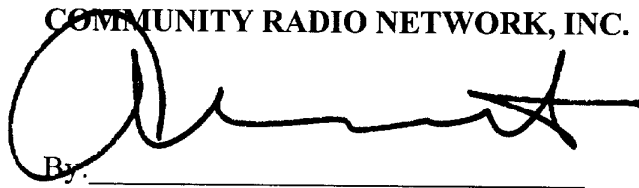
### **Expression of Continued Interest**

Community states that if the Commission allots FM Channel 229C2 to Monticello as requested, Community will, within the time allotted after the effective date, file an application for minor change construction permit to operate KHBM-FM on Channel 229C2 at Monticello, and upon grant thereof, Community will construct and operate KHBM-FM on Channel 229C2.

Wherefore, Community respectfully requests the Commission to amend its Table of Allotments to assign Channel 229C2 to Monticello, Arkansas, and to modify the license of KHBM-FM to operate on Channel 229C2 at Monticello.

Respectfully submitted,

**COMMUNITY RADIO NETWORK, INC.**

A handwritten signature in black ink, appearing to read 'Gary S. Smithwick', is written over a horizontal line. The signature is stylized with a large initial 'G' and a long horizontal stroke.

Gary S. Smithwick  
Its Counsel

**Smithwick & Belendiuk, P.C.**  
1990 M Street, N.W.  
Suite 510  
Washington, D.C. 20036  
(202) 785-2800

June 21, 1999

# GRAHAM BROCK, INC.

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BROADCAST TECHNICAL CONSULTANTS

**TECHNICAL COMMENTS**  
**COMMUNITY RADIO NETWORK, INC.**  
**MM DOCKET #99-141**  
**KHBM-FM RADIO STATION**  
**MONTICELLO, ARKANSAS**  
**June 1999**

**TECHNICAL EXHIBIT**

*Copyright 1999*

**TECHNICAL COMMENTS**  
**COMMUNITY RADIO NETWORK, INC.**  
**MM DOCKET #99-141**  
**KHBM-FM RADIO STATION**  
**MONTICELLO, ARKANSAS**  
**June 1999**

**TECHNICAL STATEMENT**

This technical statement and attached exhibits were prepared on behalf of Community Radio Network, Inc. ("CRN"), licensee of KHBM-FM, Channel 229C3, Monticello, Arkansas. CRN is also the petitioner in MM Docket #99-141 seeking to allot Channel 229C2 to Monticello, Arkansas.<sup>1</sup> In order to accommodate the requested upgrade at Monticello, it was also requested that the vacant and, at the time, unapplied for Channel 230C3 at Bastrop, Louisiana, be downgraded to Channel 230A or, as an alternative, be site restriction 7.1 kilometers south of the community to be compatible with the proposed upgrade at Monticello. Channel 230C3 was reserved for the use of station KTRY-FM in MM Docket # 87-242. KTRY-FM is presently licensed on Channel 232A at Bastrop, Louisiana. The background regarding the KTRY-FM facilities was submitted in the original petition for rule making and is incorporated herein by reference.

The licensee of KTRY-FM, Jamie Patrick Broadcasting, Ltd ("JPB"), has submitted a minor change application, BPH-990514IE, to once again implement the proposed Channel 230C3 upgrade at Bastrop, Louisiana at North Latitude 32° 49' 06" and West Longitude 91° 54' 29". This site is claimed to be the licensed coordinates for KTRY-FM.<sup>2</sup> At the proposed KTRY-FM minor change site, there is a shortspace to the proposed allocation site for Channel 229C2 at

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- 1) CRN is the successor in interest to Midway Broadcasting Company.
  - 2) According the database the licensed coordinates for KTRY-FM are North Latitude 32° 49' 10" and West Longitude 91° 54' 29".

Monticello, Arkansas, as shown on Exhibit #1. This shortage violates §73.207 of the Commission's rules.

In the notice, the licensee of KTRY-FM was instructed to respond to the notice as to “...whether it will pursue a modification to Channel 230C3 at Bastrop *at the site suggested herein*, or be modified to equivalent Channel 230A...” *emphasis added*.<sup>3</sup> Instead, JPB has submitted a minor change specifying another location, which conflicts with the Channel 229C2 proposal. As was demonstrated in the original, a Channel 230C3 facility at the site proposed in the JPB application would serve only 102,259 persons, as compared to servicing 180,307 persons from a site restricted 7.1 kilometers south.<sup>4</sup>

This proposal potentially precludes the Monticello, Arkansas, upgrade and does not service the public interest as well as the original Monticello request. More population is potentially served by the requested CRN proposal. Further, KHBM-FM is one of only three stations licensed to Monticello, Arkansas<sup>5</sup>, while KTRY-FM is one of five stations,<sup>6</sup> and was ordered to upgrade in a proceeding that was initiated in 1987.

It is therefore requested that the application for KTRY-FM be considered a “preferential site” and that JPB be ordered to amend to a site which meets the §73.207 spacing requirements to Channel 229C2 at Monticello, Arkansas.

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3) Footnote 2 - Notice of Proposed Rule Making MM Docket #99-141.

4) In fact, the KTRY-FM application shows service to only 129,681 persons, still well below the potential maximum for a site restricted C3.

5) The following stations are authorized in Monticello, Arkansas: KHBM, 1430 kHz; KHBM-FM, Channel 229C3; and KGPQ, Channel 260C3.

6) The following stations are authorized in Bastrop, Louisiana: KTRY, 730 kHz; KTRY-FM, Channel 232A; KJMG, Channel 247A; KRVV, Channel 261C2; and KAXV, Channel 220A.



The foregoing was prepared on behalf of Community Radio Network, Inc., by Graham Brock, Inc. its Technical Consultants. All information contained herein is true and accurate to the best of our belief and knowledge.

**TECHNICAL COMMENTS**  
**COMMUNITY RADIO NETWORK, INC.**  
**MM DOCKET #99-141**  
**KHBM-FM RADIO STATION**  
**MONTICELLO, ARKANSAS**  
**June 1999**

**EXHIBIT #1**

CLEARANCE STUDY FOR KTRY-FM BASTROP, LOUISIANA  
 USING PROPOSED SITE AS REFERENCE

REFERENCE	CLASS C3	DISPLAY DATES
32 49 06 N		DATA 06-18-99
91 54 29 W	Current rules spacings	SEARCH 06-18-99
----- CHANNEL 230 - 93.9 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
KTRYFM	230C3	Bastrop	LA	0.0	0.00	153.0	-153.00
AP CN	32 49 06	91 54 29	25.000 kW	88M	0.0	95.1	
	Jamie Patrick Broadcasting				BPH-990514IE		
ALOPEN	230C3	Bastrop	LA	318.8	3.98	153.0	-149.02
AL N	32 50 43	91 56 10	0.000 kW	0M	2.5	95.1	
	MM Docket #87-242						
DE230	230C3	Bastrop	LA	318.8	3.98	153.0	-149.02
DE	32 50 43	91 56 10	0.000 kW	0M	2.5	95.1	
	Midway Broadcasting Company				RM-9339		
AD230	230A	Bastrop	LA	0.0	0.12	142.0	-141.88
AD	32 49 10	91 54 29	0.000 kW	0M	0.1	88.3	
	Midway Broadcasting Company				RM-9339		
AD230	230C3	Bastrop	LA	199.9	11.18	153.0	-141.82
AD	32 43 25	91 56 56	0.000 kW	0M	6.9	95.1	
	Midway Broadcasting Company				RM-9339		
DE232	232A	Bastrop	LA	0.0	0.12	42.0	-41.88
DE	32 49 10	91 54 29	0.000 kW	0M	0.1	26.1	
	Midway Broadcasting Company				RM-9339		
KTRYFM	232A	Bastrop	LA	0.0	0.12	42.0	-41.88
LI HN	32 49 10	91 54 29	3.000 kW	88M	0.1	26.1	
	Jamie Patrick Broadcasting				BLH-6141		
AD229	229C2	Monticello	AR	17.3	105.86	117.0	-11.14
AD	33 43 44	91 34 02	0.000 kW	0M	65.8	72.7	
	Midway Broadcasting Company				RM-9339		
AD231	231C3	Arcadia	LA	247.2	105.88	99.0	6.88
AD	32 26 45	92 56 49	0.000 kW	0M	65.8	61.5	
	Houston Christian Broadcaster				RM-9538		
DE229	229C3	Monticello	AR	9.4	107.73	99.0	8.73
DE	33 46 35	91 43 02	0.000 kW	0M	66.9	61.5	
	Midway Broadcasting Company				RM-9339		
KHBMFM	229C3	Monticello	AR	9.4	107.73	99.0	8.73
LI CN	33 46 35	91 43 02	15.000 kW	129M	66.9	61.5	
	Midway Broadcasting Company				BLH-981201KB		
KGGM	228A	Delhi	LA	139.9	51.61	42.0	9.61
LI CN	32 27 45	91 33 13	6.000 kW	100M	32.1	26.1	
	KT Enterprises, Inc.				BLH-910916KA		

**AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT**

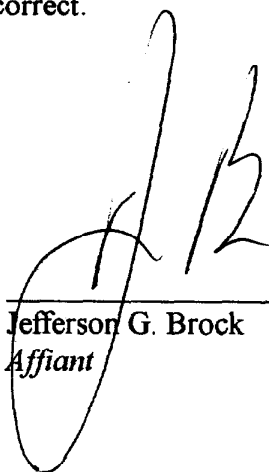
State of Georgia )  
St. Simons Island ) ss:  
County of Glynn )

**JEFFERSON G. BROCK**, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Community Radio Network, Inc., licensee of Radio Station KHBM-FM, to prepare the attached Technical Exhibit.

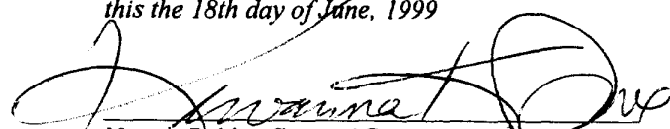
His qualifications are a matter of record before the Federal Communications Commission. He has been active in Broadcast Engineering since 1979.

The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

*This the 18th day of June, 1999.*

  
\_\_\_\_\_  
Jefferson G. Brock  
Affiant

Sworn to and subscribed before me  
this the 18th day of June, 1999

  
\_\_\_\_\_  
Notary Public, State of Georgia  
My Commission Expires: April 20, 2002

## CERTIFICATE OF SERVICE

I, Angela Y. Powell, a paralegal in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on this 21st day of June, 1999, a copies of the foregoing were sent via First Class Mail, postage pre-paid, to the following:

Ms. Nancy Joyner\*  
Federal Communications Commission  
The Portals II  
445 Twelfth Street, S.W.  
Room 3-A267  
Washington, D.C. 20554

Mr. Henry Cotton, President  
Jamie Patrick Broadcasting, Ltd.  
Radio Station KTRY-FM  
328 West Madison Ave.  
Bastrop, LA 71220



Angela Y. Powell

\*by hand